

By: Ellis

S.B. No. 136

A BILL TO BE ENTITLED

AN ACT

relating to the disclosure of personal information by an Internet service provider.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 35, Business & Commerce Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. DISCLOSURE OF PERSONAL INFORMATION BY INTERNET

SERVICE PROVIDER

Sec. 35.151. DEFINITIONS. In this subchapter:

(1) "Consumer" means a person who agrees to pay a fee to an Internet service provider for access to the Internet for personal, family, or household purposes, and who does not resell access.

(2) "Internet" means the largest nonproprietary nonprofit cooperative public computer network, popularly known as the Internet.

(3) "Internet service provider" means a person who provides consumers authenticated access to, or presence on, the Internet by means of a switched or dedicated telecommunications channel on which the person provides transit routing of Internet Protocol packets for and on behalf of the consumer. A person is not considered an Internet service provider under this subchapter by reason of the person's offering, on a common carrier basis, of telecommunications facilities or of telecommunications by means of

1 these facilities.

2 (4) "Personally identifiable information" means
3 information that identifies:

4 (A) a consumer's physical or electronic address
5 or telephone number;

6 (B) specific materials or services requested or
7 obtained by a consumer from an Internet service provider;

8 (C) Internet or on-line sites visited by a
9 consumer; or

10 (D) any of the contents of a consumer's data
11 storage devices.

12 Sec. 35.152. APPLICABILITY OF SUBCHAPTER. This subchapter
13 applies to the provision of Internet services to a consumer located
14 in this state.

15 Sec. 35.153. DISCLOSURE OF PERSONAL INFORMATION
16 PROHIBITED. Except as provided by Section 35.154 or 35.155, an
17 Internet service provider may not knowingly disclose personally
18 identifiable information concerning a consumer of the Internet
19 service provider.

20 Sec. 35.154. EXCEPTION: DISCLOSURE REQUIRED. (a) An
21 Internet service provider shall disclose personally identifiable
22 information concerning a consumer:

23 (1) to a peace officer, as defined by Article 2.12,
24 Code of Criminal Procedure, acting in the officer's official
25 capacity;

26 (2) in response to a warrant, court order, or
27 subpoena, including an administrative subpoena, issued under a law

1 of this state, another state, or the United States, except that
2 disclosure of the information may be required in a civil action only
3 on a showing of compelling need for the information that cannot be
4 accommodated by other means;

5 (3) to a court in a civil action brought by the
6 Internet service provider for conversion or to enforce collection
7 of unpaid subscription fees or purchase amounts, only to the extent
8 necessary to establish the fact of the subscription delinquency or
9 purchase agreement, and with safeguards considered by the court to
10 be appropriate to prevent unauthorized disclosure; or

11 (4) to the consumer who is the subject of the
12 information, if the consumer requests the information in writing or
13 by electronic means and pays a fee set by the Internet service
14 provider.

15 (b) A fee set by an Internet service provider for the
16 disclosure of a consumer's personally identifiable information to
17 the consumer under Subsection (a)(4) may not exceed the actual cost
18 of providing the information.

19 Sec. 35.155. EXCEPTION: DISCLOSURE PERMITTED. (a) An
20 Internet service provider may disclose personally identifiable
21 information concerning a consumer to:

22 (1) any person if the disclosure is incident to the
23 Internet service provider's:

24 (A) debt collection activities;

25 (B) fulfillment of orders for Internet service;

26 (C) processing of requests for Internet service;

27 or

1 (D) transfer of ownership;

2 (2) another Internet service provider for purposes of
3 reporting or preventing a violation of the published acceptable use
4 policy or customer service agreement of the consumer's Internet
5 service provider; or

6 (3) any person with the authorization of the consumer
7 as provided by Subsection (c).

8 (b) An Internet service provider who receives personally
9 identifiable information under Subsection (a)(2) may disclose the
10 personally identifiable information only as provided by this
11 subchapter.

12 (c) An Internet service provider may obtain the consumer's
13 authorization of the disclosure of personally identifiable
14 information in writing or by electronic means. The consumer's
15 authorization is effective only if:

16 (1) the request for authorization reasonably
17 describes the types of persons to whom personally identifiable
18 information may be disclosed and the anticipated uses of the
19 information;

20 (2) the contract between an Internet service provider
21 and the consumer conspicuously states that:

22 (A) the authorization will be obtained by an
23 affirmative act of the consumer; or

24 (B) failure of the consumer to object after the
25 request has been made constitutes authorization of the disclosure
26 of personally identifiable information; and

27 (3) the Internet service provider obtains

1 authorization of the disclosure in a manner consistent with
2 self-regulating guidelines issued by representatives of the
3 Internet service provider or on-line industries, or in any other
4 manner reasonably designed to comply with this subsection.

5 Sec. 35.156. SECURITY OF INFORMATION. An Internet service
6 provider shall take reasonable steps to maintain the security and
7 privacy of a consumer's personally identifiable information.

8 Sec. 35.157. EXCLUSION FROM EVIDENCE. Except for purposes
9 of establishing a violation of this subchapter, personally
10 identifiable information obtained in any manner other than as
11 provided by this subchapter is not admissible in evidence in a civil
12 action.

13 Sec. 35.158. ENFORCEMENT; DAMAGES; DEFENSE. (a) On
14 violation of this subchapter, a consumer whose personally
15 identifiable information is involved in the violation may bring an
16 action for damages.

17 (b) A consumer who prevails in the action is entitled to the
18 greater of \$500 or actual damages.

19 (c) A court may award court costs and reasonable attorney's
20 fees to a party awarded damages for a violation of this subchapter.

21 (d) A class action may not be brought under this subchapter.

22 (e) It is a defense to an action under this subchapter that
23 the Internet service provider has established and implemented
24 reasonable practices and procedures to prevent violations of this
25 subchapter.

26 Sec. 35.159. APPLICATION OF OTHER LAW. (a) This subchapter
27 does not limit any greater protection of the privacy of information

1 under other law.

2 (b) This subchapter does not limit the authority under other
3 state or federal law of a law enforcement or prosecuting authority
4 to obtain information.

5 SECTION 2. This Act takes effect September 1, 2003.